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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. 13-CR-00002 RS
	)	
Plaintiff,	)	[PROPOSED] ORDER DETAINING
	)	DEFENDANT PENDING TRIAL
v.	)	
	)	
GABRIEL URIBE-BAUTISTA,	)	
	)	
Defendant.	)	

Defendant Gabriel Uribe-Bautista was charged in an indictment with one count of possession with intent to distribute and distribution of 500 grams or more of a mixture and substance containing methamphetamine, which is a drug offense carrying a minimum sentence of ten years imprisonment under the Controlled Substance Act, and one count of possession with intent to distribute and distribution of cocaine. Following a hearing pursuant to 18 U.S.C. § 3142(f), considering the factors set forth in Section 3142(g) and the bail study prepared by Pretrial Services, and for the reasons stated on the record in open court, the Court finds that in this presumption case, *see* Section 3142(e)(3)(A), no condition or combination of conditions in Section 3142(c) will reasonably assure the defendant's appearance in this case or the safety of any other person or the community.

1 The defendant is subject to an immigration detainer issued by the United States
2 Department of Homeland Security (“DHS”). If he were released from custody of the United
3 States Marshal in this matter, he would be released to DHS custody and deported. Thus, he
4 would not be able to appear for court in this matter. Moreover, as noted in the bail study
5 prepared by Pretrial Services and based on his own statements as reflected therein, the defendant
6 has family and other ties to Mexico that would allow him to stay in Mexico rather than return to
7 face the charges in this case. The bail study also noted that the defendant has prior convictions
8 for drug offenses that — albeit not violent offenses based on the record before the Court —
9 along with the alleged instant offense conduct, present a danger to the community. Therefore,
10 the presumption is not rebutted and, recognizing that the presumption is only a burden of
11 production and that the burden of persuasion remains with the government, *see United States v.*
12 *Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008), the Court finds alternatively by a preponderance of the
13 evidence that there is a risk of flight and by clear and convincing evidence that he is a danger to
14 the community.

15 The Court’s decision is without prejudice to the defendant’s ability to raise evidence at a
16 future hearing. The Court orders the defendant committed to the custody of the Attorney
17 General or a designated representative for confinement in a corrections facility separate, to the
18 extent practicable, from persons awaiting or serving sentences or held in custody pending appeal.
19 *See* 18 U.S.C. § 3142(i)(2). The defendant must be afforded a reasonable opportunity to consult
20 privately with counsel. *See id.* § 3142(i)(3). On order of a court of the United States or on
21 request of an attorney for the government, the person in charge of the corrections facility must
22 deliver the defendant to the United States Marshal for a court appearance. *See id.* § 3142(i)(4).

23
24 IT IS SO ORDERED.

25
26 DATED: January ___, 2013

27 _____
HON. LAUREL BEELER
United States Magistrate Judge